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AMICUS CURIAE

Vol. 7, No. 2

THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Nov. 25, 1957

Mallory Decision Reflects Sound Policy

By

U. S. Senator Thomas C. Hennings, Jr.
of Missouri



Missouri's senior U. S. Senator, Thomas C. Hennings, Jr., Chairman of the Committee on Rules and Administration in the United States Senate, was born in St. Louis on June 25, 1903. He was first elected to the Senate in 1950--where he now serves as a member of more committees and sub-committees than any other Senator--fifteen in all.

Senator Hennings received his elementary education in the St. Louis public schools. In his teens, he worked on Missouri farms as a harvest-hand, trucker and loader. Attending Cornell University he was an outstanding track athlete, and was graduated with a B.A. degree in 1924. He took his law degree in 1926 at Washington University, completing the three-year course in two years. He was admitted to the Missouri Bar that same year. While attending Washington University, Hennings found time to coach the University track team and to teach in the English Department, in order to help defray the costs of his legal education. He was also a lecturer in law at Benton College of Law, St. Louis, from 1929 to 1935, and was awarded an Honorary Doctor of Law Degree by Central College in Fayette, Missouri, in 1954.

Within a few years after graduation from law school, Hennings was appointed Assistant Circuit Attorney, and acted as courtroom prosecutor in felony cases in St. Louis. He served in this capacity, in the height of the "gang" era, from 1929 to 1934. He was elected to the U. S. House of Representatives--the first Democrat in 22 years to represent Missouri's 11th Congressional District. He was twice re-elected and served a total of six years in the House.

GWU Loses First Round In Moot Court Circuit

CASE CLUB FINALIST

Three nights of oral arguments by twelve students resulted in the choice of the Case Club finalists for the 1957-58 Competition. Gene Bechtel, James Flood, Carl Love and Larry Wise were selected by a panel of five judges who heard all the rounds of argument. Phil Connor is alternate.

This represents the next to the last leg in another year of intra-school appellate argument competition. All teams argued the National Moot Court Competition case and also submitted written briefs on the subject.

Before the finals which will take place sometime this spring, a new Competition will be under way. This is open to any student having completed one semester's work in the Law School. All students are urged to participate. The Van Vleck Case Club Competition is the only opportunity for appellate argument while in school.

Announcements of Case Club activities appear on the bulletin board on the first floor of the Law School.

Henning's resignation from Congress in 1940 came as a result of the action of the Judicial Selection Committee of the St. Louis Bar Association, which drafted him as a candidate for the Office of Circuit Attorney of St. Louis, to which he was nominated without opposition and elected. In this capacity, Hennings supervised the prosecution of hundreds of criminals. During this time, he also worked on the first major revision of the Missouri Criminal Code to eliminate many of the technicalities whereby criminals had been able to elude conviction.

Mallory v. United States, 354, U.S. 449, decided June 24, 1957, is an up to date statement, unanimously expressed, to the effect that the United States Supreme Court does not intend to tolerate unnecessary delays by Federal law enforcement officers in formally charging individual persons with specific crimes.

(Cont. P. 3)

The moot court teams of George Washington University Law School and Catholic University met at G.W. Law School October 31. A close decision was given to Catholic University with one of the three judges dissenting.

Comprising the moot court, sitting as the United States Supreme Court, were Judges Alexander Holtzoff and Burnita S. Matthews of the U.S. District Court for the District of Columbia and Judge Edward A. Beard of the Municipal Court of D.C.

The Catholic University team, who represented respondents in the action, were Ed Arnold, Paul Chretien and Dick Dahl. The latter member did not present an argument. From G.W., arguing as attorneys for the petitioners, were James J. Flood and Gene A. Bechtel.

The subject for argument was the dismissal by a government security board of a guided missile scientist, Dr. Ohm, from a position with a private business under contract with the government. The job required Dr. Ohm to have access to classified material. He had been considered a security risk by the government because his wife had previous dealings with Russians. Respondents alleged that the scientist's constitutional rights of due process of law had been violated. Petitioners questioned the jurisdiction of a court reviewing the decision of an administration board and claimed due process was not an issue.

Respondent had prevailed in the U.S. District Court for the D.C. and the U.S. Court of Appeals for the District of Columbia Circuit. The attorneys for respondents, Catholic University, successfully obtained an affirmation by the United States Supreme Court.

By losing to Catholic University, George Washington is eliminated from further inter-scholastic competition this year. G.W.'s team was at a certain disadvantage since they were not selected until this past fall. Next year it is determined that the team will be selected in the spring which would allow an opportunity for better preparation and more polished presentation.

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IT'S LATER THEN YOU THINK

If the American Medical Society were to search for a healthy body of students in colleges or universities, their least probable resort would be the hallowed halls of a legal institution. With the late "nocturnal vigils" and the semester-end cramming, L.L.B. aspirants are usually candidates en masse for "Mr. Anemia" or "Brother Weakeyes" title for the current year. Yet, these tragic figures of American manhood stagger on; strong in heart, steeped in law,--and oblivious to any physical defects in their bodies.

With the advent of this mysterious disease from the Orient and its Americanized cousin, the picture has been drawn into sharp focus; and shown the necessity for good physical condition. Consideration of this by some of us is too late in regards to flu, as we were caught with our "antibodies" down. But, there is more than one malady, disease or defect which can afflict the human body at any given time, making it necessary for scheduled physical check-ups with doctor, optician, and dentist.

The very idea by a legal personality of seeing a member of his brother profession brings about a rebellion in his mind. Whether it's professional jealousy, or the urge to keep all the money in the legal world, is an unanswerable question. But the fact remains, the attorney begins to think of a medical man as an "expert" witness and nothing else, during his law school days, and this carries over to his career.

Several articles have been published in professional magazines and texts, such as the American Bar Association Journal to dispel this prejudice held by attorneys, but it remains to the individual to set the desired pattern of good health. This being the case, why not take steps to save yourself possible lost manhours in the future by starting now on a lasting program aimed at good health?

SELF—Reliance—

Reliance on gov't is more than an insidious disease. It is the robbing of men, 1st of their initiative and finally of their freedom.

"Whose bread I eat, his song I sing," comes to us today as a warning proverb from the England of long ago when men were fighting for their freedom.

MR. POTTS GIVES SOME ANSWERS

As Secretary of the Law School I am delighted to have this opportunity to address myself to the student body and to briefly outline some of the duties of my office.



Included in those functions which directly involve students are: All student records (including the dropping and adding of courses, as well as withdrawals); grades; the designation of scholastic probation and exclusion for poor scholarship; administration of regulations concerning attendance and residence requirements; student problems concerning Selective Service and National Service Leave; registration of students; examinations; graduation exercises; placement; and liaison between students and faculty on co-curricular activities. This is by no means an inclusive listing but I believe it demonstrates clearly why I often refer to my office as the "Headache Department"!

A typical day begins with a call from a prospective employer who wants to give a deserving student the "opportunity of a life-time". Freely translated this often means he wants a second Justice Holmes, for seventy-five cents an hour and carfare, to empty wastebaskets, sharpen pencils, and at the same time be responsible for some of the less important duties in the office.

Next on the agenda frequently is the irate wife of a student who has just opened the morning mail which included a "probation notice" addressed to her husband. This usually winds up with a heated and colorful bit of advocacy with the main theme of "John works every night (all night) in the library perfecting his knowledge of the law -- and who do these Professors think they are anyhow"? Surprisingly enough I seldom hear anything from Himself John.

In the afternoon I often have an encounter with the counterpart of the employer referred to above. This is the student who desires to give an outstanding local law firm "the opportunity of a lifetime" by offering them the services of a most promising young man with experience and a real talent in the law, a splendid academic background, and one who is willing to work for peanuts if he has a real chance to learn the practice of law. Freely translated this is a second semester student with a 66.7 average who will work for a paltry \$3.00 per hour if guaranteed trial experience immediately. To me the most amazing thing about this type of placement situation is the frequency with which the previously described employer and this student get together and both are delighted.

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SBA Briefcase

By Chuck Thompson

This article is primarily directed towards informing the members of the SBA of the activities that have taken place since the beginning of school and of those coming up in the immediate future.

Most of you have by now received your copy of the SBA Student-Faculty Directory. Those who have not received it may obtain it in the Law School Library. I hope those of you who have not picked up your directory as yet, will avail yourselves of this opportunity to obtain one. I am sure that you will find it can be of great service to you. The SBA Board of Governors has received many compliments from faculty and students about this fine directory and on behalf of the Board, I would like to pass on these, as well as our own thanks, for a job well done to George Vakos, Student Editor-in-Chief.

A new letter insert board has been obtained in order to better disseminate information about the SBA activities throughout the year. I am sure that many of you have seen the board but for those who have not it is located just inside and to the left of the main door of the Law School. I hope that everyone will check from time to time for news of coming activities. This board will carry all announcements of SBA activities henceforth.

Our first professional meeting of the year was held at the Roger Smith Hotel. The principal speaker for the evening was John T. Fey, Clerk of the United States Supreme Court who formerly served as Dean of the George Washington University Law School. His remarks were well received by all who attended. We were particularly pleased with the fine turnout of faculty and students and are looking forward to a very successful year of programs.

Stan Parris, Program Committee Chairman informed the Board at our last meeting that he has obtained J. Lee Rankin, Solicitor General of the United States as the speaker for our next professional meeting.

The Audio-Visual Aid Committee, under the leadership of Lou Guthrie, has done a splendid job of selecting films for your edification and enjoyment. The next film to be shown will be "Asphalt Jungle" on Dec. 4, at 1:00 p.m. and 7:45 p.m. in Room 10. A complete schedule of all movies for the entire year was distributed to each student at registration. Everyone is welcome and those who would like to bring their wives or friends are welcome to do so.

The American Law Student Association recently sent our Law School a plaque. It is now on display in the trophy case, which is located in the business office of the Law School. The plaque was sent as recognition of our SBA being chosen Outstanding Student Bar Association in the United States. I would like to again call to your attention that as a member of the SBA, you

MALLORY (Cont. from P. 1)

The decision is a judicial interpretation of Rule 5(a) of the Federal Rules of Criminal Procedure. Rule 5(a) reads:

"(a) Appearance before the Commissioner.

An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith."

The Supreme Court emphasized the importance of "without unnecessary delay" in the requirement that the officer "... shall take the arrested person without unnecessary delay before the nearest available commissioner ..."

Mallory was convicted in a federal district court for the District of Columbia, for the crime of rape; he was sentenced to death after a trial in which there was admitted in evidence a confession.

Mallory had been arrested early in the afternoon and detained at police headquarters within the vicinity of numerous committing magistrates. No immediate attempt was made to have him arraigned. To the contrary, he was questioned extensively. About 9:30 in the evening after Mallory had confessed the first attempt was made to take him before a committing magistrate. Because of circumstances then existing the arraignment was not accomplished until the following morning. Therefore, Mallory's confession was obtained before he had been advised of and accorded the protections provided him by law. The Court held that this was a violation of Rule 5(a) of the Federal Rules of Civil Procedure, and reversed the conviction.

This case is important to all of us who are interested in the security and protection of the many individual rights guaranteed to us in our National Constitution; it represents continuing action by the highest court of our land to see that these rights are adequately safeguarded and that convictions for criminal offenses in violation of these rights shall not be permitted to stand.

Rule 5(a) as the Court pointed out, has both statutory and judicial antecedents for guidance in applying it. The requirement that arraignment be "without unnecessary delay" is, the Court says, "a compendious restatement, without substantive change, of several prior specific federal statutory provisions."

The Court spelled out the important reasons of policy behind this body of legislation in the famous case of McNabb v.

United States, 318 U.S. 332, at 343-344: "The purpose of this impressively pervasive requirement of criminal procedure is plain . . . the awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is vested in the various participants upon whom the criminal law relies for its vindication. Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard, not only in assuring protection for the innocent, but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society. For this procedural requirement checks resort to those reprehensible practices known as the 'third degree' which, though universally rejected as indefensible, still find their way into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime."

In *Upshaw v. United States*, 335, U.S. 410, which was decided after the Federal Rules of Criminal Procedure had been adopted, the Court made it clear that the standard of "without unnecessary delay" provided for in Rule 5(a) did not imply any relaxation of the McNabb doctrine.

The scope of the Federal Rules of Criminal Procedure is found in the very first Rule where it is stated that these Rules are to govern the procedure in the Federal courts of the United States and before United States Commissioners in all criminal proceedings, with only a few exceptions. Further, these rules are intended to provide for "the just determination of every criminal proceeding." They are to be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. The rules provide a definition for a complaint, warrant and summons upon complaint, and proceedings before the Commissioner, where in Rule 5(c) a defendant is provided with a preliminary examination unless he waives it. Arrests by the police are not to be upon mere suspicion, under these rules, but only on "probable cause"; the Court in *Mallory* says that it is not the function of the police to arrest at large and to use an interrogating process at police headquarters in order to determine whom they should charge at a later time before a committing magistrate, the police must arrest on "probable cause" and not on mere suspicion.

The reasoning behind Rule 5(a) and the judicial decisions in *Mallory*, *Upshaw* and *McNabb*, is relatively simple. First of all, the Fifth Amendment provision providing a privilege against self-incrimination should be viewed in a practical light and not merely as an academic theory. A confession obtained as a result of third-degree police activities or the psychological coercion caused by long questioning and

(Cont. P. 4)

POTTS (Cont. from P. 2)

The day is apt to close with an evening student bursting through the door, three minutes before classes begin, to demand an explanation for the letter he just received suggesting, in essence, that if his attendance doesn't pick up radically his problems will be greatly reduced come examination time. Some take a very dismal view of the attendance requirements in the Law School and I am extremely well informed on their views. They range from the feeling that it is "childish", to the idea that the Secretary doesn't have anything else to do. To inject an extremely sincere thought on this subject, I disagree completely with those holding to these attitudes. The attendance requirement is sound on several counts. First, you must consider the question of educational standards. Second, you cannot ignore the fact that the University is required to certify a specified number of class hours of instruction to some of the Boards of Bar Examiners in the various states. Third, and to my way of thinking most importantly, there is a clear question of institutional responsibility. To anyone working with student records the high correlation between poor attendance and poor scholarship is striking but certainly not surprising. The results of attendance deficiencies are forcefully brought home when student applications for reinstatement, after exclusion for poor scholarship, come up for review. In short, a primary function of the Law School is to put forth every effort possible, consistent with sound legal educational standards, to assist each student in the successful pursuit of his or her degree in law. The attendance requirement is an integral part of this function.

In closing let me say that I, like the other administrative officers and personnel of the Law School, stand ready to assist each student in every way possible. It is my firm belief that there is an answer for every legitimate student problem and for most there is a remedy if assistance is solicited promptly.



"... and another thing, there's been entirely too much tardiness in this class of late."

FRATERNITY CORNER

PHI ALPHA DELTA held its first Professional Meeting on October 2nd at the Roosevelt Hotel. Speaker at this event was Clarence Lutz, D. C. Deputy Chief of Police, and Head of the Morals Division. Chief Lutz discussed the work of the D.C. Police and then commented at some length on the recent Mallory decision. Also at this meeting, Jay Chapter was presented plaques as the Most Outstanding P.A.D. Chapter in the nation.

A P.A.D. rush event was held on November 5, at the Roger Smith Hotel. Speaker at this meeting was Dr. E. C. Welsh, missile expert, who spoke on the subject, "The Significance of Sputnik".

The first P.A.D. social event of the Fall semester was a Pre-Halloween Hayride held on Saturday, Oct. 26. Some 60 P.A.D.'s, their guests, wives and dates attended this outing which consisted of a hayride followed by a weiner roast on the beach.

In addition to the above events, P.A.D. has also held two very well attended meetings of their Toastmasters group. This organization is devoted to the improvement of public speaking ability and is open to all law students.

Future P.A.D. events include: Toastmasters--Dec. 1, Rectors Restaurant; Formal Initiation--Dec. 14, The Supreme Court; Reception Buffet--Dec. 14, The Cosmos Club.

DELTA THETA PHI held its first Rush function of the year at the Statler Hotel. The principal speaker for the evening was Frank G. Millard, General Counsel of the Army. This was closely followed, in October, by a function at the Roger Smith Hotel, where the featured speaker was Frederick Stueck, Vice-Chairman of the Federal Power Commission. The most recent function to date was held at the Sigma Chi House with Ed Potts, Secretary of the Law School, speaking about the Law Center.

Our football team has been doing very well in the intramural program with 3 won, 1 lost, and 1 tie record for the season.

Professor Glen Weston, George Wilsey, and Eddie LeBaron, were recently initiated as members of Omicron Delta Kappa, National Honorary Leadership fraternity. Present members in Omicron Delta Kappa are: Chuck Thompson, Larry Wiser, and Gorden Van Sanford.

PHI DELTA DELTA held its first meeting Sunday, September 29, at the home of Miss Libby Bisselle. Present at this meeting were Mary Pittman, President; Mary Ellen McCorkle, Sofia Petters, Libby Bisselle, Toni Friedman, Carter Baum, Beverly Stiburek, Kitty Fowler, Margaret Schulman and Mary Turner. Plans were discussed concerning Rush functions and future professional meetings.

MALLORY (Cont. from P. 3)

unnecessary delays prior to arraignment destroy the very foundation upon which any confession should be admitted -- that is, for a confession to be valid and admissible against an individual in a criminal prosecution, it must actually be voluntary because to permit otherwise would be to violate the provision against self-incrimination. But there are other considerations which gravitate against the use of torture to obtain confession, whether the torture be actual physical violence or the equally reprehensible fear and threats used especially in the world today by totalitarian police forces. These considerations are two-fold (one), torture offends our sense of dignity as civilized human beings and respect for the worth of the individual; (two), history has demonstrated time and time again that torture seldom produces the truth and very often produces wild flights of fantasy.

It might seem, then, that Mallory and Rule 5(a) would be generously applauded in American society as representative of our high standard for treatment of persons who are suspected of criminal activity. But, sadly, it has to be noted that the Mallory decision was severely attacked, both by spokesmen for law enforcement officers and by representatives of the people in the Congress of the United States. In fact, bills were introduced in Congress in the last session, shortly after announcement of the Mallory decision, which had the avowed intention of modifying the rule of "unnecessary delay prior to arraignment." One type of legislative proposal would authorize the police to detain a suspected person for an expressed period of time -- "12 hours" -- prior to arraignment. Another type of statutory amendment would not permit a confession to be thrown out as invalid under the requirements that the person be arraigned without unnecessary delay. Whether either of these types of proposals can be defeated in the coming session of Congress will depend on the good sense of our national legislators and their recognition of the necessity for preserving our sacred constitutional rights, which -- in criminal proceedings -- are designed to protect the guilty, the suspected, the involved, as well as the purely innocent.

The first rush function was a cocktail party held at the home of Mrs. Ralphine Staring, on Sunday October 27. This very lovely home provided the setting for those of Zeta Chapter to become acquainted with the new law students of George Washington University. Zeta members also got the chance to meet professors and families of other members.

A final rush function is to be held in Kenwood, Maryland, on Saturday, November 16. Women of G.W.U. Law School eligible for professional membership will be entertained at a luncheon in their honor.

LAW DAY PLANS

Plans for the annual George Washington University Law Day are now well underway, according to a report just received from Don Hutson, 1958 Law Day Chairman.

The date has been set for Saturday, March 15 and official approval for the program has been received. Present plans call for a hearty seafood luncheon at the Roosevelt Hotel, 2001 16th St. N.W., followed by a debate between four United States Senators on the subject: "RESOLVED: That the requirement of membership in a labor organization as a condition of employment should be illegal."

This topic, concerned with the proposed passage of federal "right to work laws", is of timely importance because of the continuing investigation of labor unions and labor practices. Present indications are that legislation of the type to be debated at the Law Day luncheon may well be one of the major issues facing the next session of the Congress.

Mr. Hutson also reports that arrangements are now underway to carry the Senatorial debate on at least one major T-V station and possibly others.

A second feature of the 1958 Law Day program will be a dinner-speaker-dance. This event, also scheduled to be held at the Roosevelt Hotel, will begin with cocktails at 7 p.m., continue with a turkey dinner and all the trimmings at 8 p.m., include a speech by a person prominent in national affairs, and conclude with a three hour dance in the Hotel's Grand Ballroom. Music for the evening will be furnished by the well known Eddi Pierce Orchestra.

BRIEFCASE (Cont.)

are also a member of the A.L.S.A. The A.L.S.A. renders a great deal of service to the law student throughout the year free of charge. One of the services rendered is a free subscription to the Student Lawyer Journal which will be mailed to each student within the next few days. I have also received several hundred copies of Canons of Professional Ethics for the first year law students. Each student will receive a copy during their Legal Method class. These are but a few of the services rendered by the A.L.S.A.

The Board received and regretfully accepted the resignation of Frank Fetta, Book Store Manager. Roy Duesterdick, former Book Store Treasurer, was elected Book Store Manager. The office of Book Store Treasurer, which is now vacant, will be filled by an election at our meeting on Nov. 18th.